S.B. Criminal Revision Petition NO.852/2005
(Dau Lal & Ors. Vs. State & Anr.)

Date of order : 11.5.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. B.S. Rathore, for the petitioners.
Mr. Ashok Upadhyay, Public Prosecutor.
Mr. Pradeep Shah, for the non-petitioner No.2.

Heard learned counsel for the parties and gone through the impugned order as well as the record of the case.

By way of filing the present revision petition, the petitioners have challenged the order dated 23.7.2005 passed by Addl. Chief Judicial Magistrate No.2, Jodhpur in Criminal Case No.602/2005 whereby the Magistrate has refused to accept final report submitted by police and took cognizance against the petitioners for offence under Sections 420, 406, 12-B I.P.C.

As per the facts narrated in the F.I.R., the Development Officer, Jodhpur issued patta No.56 and 57 vide order in File No.4/32-33 on 19.1.1933. The total land of these pattas were 7498.45 Sq. Ft. and 73874.0 Sq. ft. respectively. These pattas were in the names of Surajmal, Shiv Lal, Shanker Lal, Govind Lal, Dau Lal, Kanahiyalal, Babu Lal, Gyare Lal, Murli Lal, Mangi Lal, Sangati Lal, Narayan Lal, Amar Lal and

Imarti Lal. As per the FIR, the complainant was having 1/15th share in the land and remaining land was in the shares of other persons. It is alleged by the complainant that when he was residing at Jodhpur, he was using the said property. Now because of his old age, he is living with his sons and complete property is being looked after by the petitioners. It was further stated that in the FIR that all the persons whose names appear in the patta are either brothers and nephews of the petitioners or they are close relatives of the complainant. Further, as per the allegations of the complainant, the petitioners conspired with each other and sold the aforesaid land which was in the share of the complainant without his permission and knowledge and they have also taken his share money and did not give to him. As per the allegations of the complainant, he is alive and his sons are also alive even then they did not inform anything to him or his sons and without taking any permission, the petitioners sold the said land and have fabricated the false power of attorney and from that power of attorney, the petitioners sold the share of the complainant's land also, which is offence under Sections 420, 467, 468, 471, 472 and 120-B I.P.C.

After investigation, the Police submitted final report in the Court and the notices were issued to the complainant and the complainant appeared in the court and filed protest petition on 19.1.2005.

Learned Magistrate after going through the protest petition took cognizance against the petitioners for offence under Sections 420, 406 and 120-B I.P.C. vide impugned order dated 23.7.2005.

Learned counsel for the petitioners vehemently argued that the impugned order is illegal and therefore, deserves to be quashed. It is further submitted that the matter was thoroughly investigated by the Police and after recording the statements of witnesses and taking into consideration the revenue record and other record pertaining to the land in dispute, final report was given because a suit is pending in this case and thus, the case is of civil nature. It is further contended that the learned Magistrate has erroneously took cognizance against the petitioners knowingly well that a civil suit is pending and the dispute is of civil nature. It is contended by the learned counsel for the petitioners that the learned Magistrate while taking cognizance against the petitioners did not discussed the evidence collected by the Police and and did not give any reasons for not agreeing with the Final Report submitted by the police. This approach of the learned Magistrate is against the settled law of Apex Court. Further, it is submitted that it was mandatory for the learned Magistrate to give reasons for not accepting the Final Report and taking cognizance against the

petitioners and in absence of such reasons, it cannot be said that Magistrate has applied his mind towards the findings of the final report. Therefore, it is prayed that the impugned orders deserves to be quashed.

Learned counsel for the petitioners has invited the attention of this Court towards the judgment rendered by this Court in case of Narendrapal Kotadia & Ors. Vs. State & Anr., reported in 2004 (1) Cr.L.R. (Raj.) 589.

On the other hand, learned counsel for the non-petitioner No.2 vehemently argued that in this case after taking into account entire evidence and examining the same, the learned Magistrate has arrived at with the finding that there is sufficient evidence for taking cognizance against the petitioners.

In this case, learned Magistrate after taking into account the fact that the land in dispute was joint property of the family in which the complainant was having his share, which is not disputed in the sale deed while observing that the complainant is also having his share, the said land was sold. But he has not been shown as seller and Police has given final report on the ground that this case is of civil nature. Learned Magistrate has taken into account the reasons given by the Police with regard to civil

dispute and gave its finding that on record the copy of the suit is available so also the reply of the suit is also available on record in which it is specifically stated as follows :-

> "........साथ ही अप्रार्थीगण द्वारा दिये गये जवाबदावे की प्रति भी पत्रावली पर उपलब्ध है जिसमें अंकित किया गया है कि पक्षकारों के बीच मौखिकरूप से बंटवारा 1997 में हो चुका है । जबकि बेचाननामा मुख्तारनामें के जरियें किया गया है वह इससे पूर्व दिया गया जाहिर होता है"

In these circumstances, while giving finding by the learned trial court that prima facie it appears that without any partition of the property, the land was sold which is admitted position in this case because civil suit has been filed for partition and the consideration for sale was also not paid to the complainant nor any permission was taken from the complainant for sell of the property in which the complainant was having his share. Therefore, it is obvious that without taking any consent or informing the complainant, the land was sold by the petitioners in which the complainant was having his share. Therefore, it is obvious that at the time of taking cognizance and passing impugned order, the reasons which were given by the Investigating Officer were considered properly by learned Magistrate. The contention of the learned counsel for the petitioners is totally unfounded that at the time of passing the impugned order, the learned Magistrate has not

considered the finding of final report submitted by the Police. In the operative portion of the impugned order, the reasons for rejecting the final report has been elaborately considered by the learned Magistrate. It is also observed that undoubtedly the complainant was having his share in the property, which was sold by the petitioners without taking any permission and informing the complainant.

In the circumstances, I see no reason to interfere with the order impugned dated 23.4.2005, taking cognizance against the petitioner.

Accordingly, the revision petition is dismissed.

(GOPAL KRISHAN VYAS), J .

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